# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No.769 of 2001**

**Decided on : April 13, 2007**

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**H.P. Board of School Education** **....Petitioner.**

***VERSUS***

**Krishanu Ram** **....Respondent.**

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***Coram***

**The Hon'ble Mr. Justice Surjit Singh, Judge.**

**The Hon'ble Mr. Justice Sanjay Karol, Judge.**

***Whether approved for reporting?***

**For the petitioner : Mr. Lovnesh Kanwar, Advocate.**

**For the Respondent : Mr. Shrawan Dogra, Advocate.**

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**Surjit Singh, Judge (Oral)**

Writ petitioner has sought judicial review of order dated 23.4.2001, passed by the H.P. State Administrative Tribunal, whereby it (the writ petitioner) has been directed to give all the monetary benefits of promotion to the respondent from the date of his notional promotion.

***2.*** Relevant facts are like this. Respondent is an employee of the writ petitioner. He was recruited as a Clerk. He was involved in some criminal case. The allegation was that he had changed the figures pertaining to the marks obtained by three candidates in some examination conducted by the writ petitioner. Matter was reported to the Police by the writ petitioner. Police investigated the case and challaned the respondent. Trial Court acquitted the respondent. Vide para-14 of its judgment, the trial Court held as follows:

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

> "Thus, having regard to entire evidence on record, it can safely be concluded that there is nothing on record which could connect the accused persons with the commission of offence under aforesaid sections 420.467/468/120-B IPC. Consequently, I have no hesitation in coming to the conclusion that the prosecution has miserably failed to bring home the guilt of the accused, beyond the shadow of dount. Accordingly these points are decided in negative."

***3.*** After his acquittal, the respondent was departmentally proceeded against on the same allegations on which he was tried by the criminal Court and acquitted. The respondent filed an Original Application before the State Administrative Tribunal challenging the action. During the pendency of the said Original Application the Departmental proceedings concluded. The respondent was exonerated. When the criminal Trial and the Departmental proceedings were going on, the respondent became eligible for consideration for promotion. However, he was not promoted, because of the pendency initially of the criminal trial and thereafter the Departmental proceedings. When the Departmental proceedings terminated in favour of the respondent, he was promoted vide order dated 25.6.1999, w.e.f. 22.2.1991. This was a notional promotion. He was granted benefit of special allowance of Rs.80/- per month, w.e.f. 1.3.1992. However, the benefit of pay and allowances was ordered to be given from the date of actual joining against the higher post, that is to say the post to which he was promoted. This order was passed during the pendency of the Original Application before the Tribunal. It appears that an application was made to the Tribunal by the

respondent that though he had been given the notional promotion from back date, which was the due date, i.e. 22.2.1991, monetary benefits had been ordered to be given only from the date of his actually joining the higher post.

***4.*** The Tribunal vide order dated 23.4.2001, Annexure P-3, directed the writ petitioner to treat the respondent as having been promoted with effect from 22.2.1991 for all intents and purposes and to give him all consequential benefits and release the arrears of pay etc. within 60 days.

***5.*** It is alleged in the writ petition that since the respondent had not worked against the higher post prior to the date of the issuance of the order of his promotion, i.e. 25.6.1999, he could not have been granted benefits of pay and allowances for the period prior to his joining the higher post, in view of the principle of “no work no pay” and, therefore, the order of the Tribunal is bad.

***6.*** We have heard the learned counsel for the parties and gone through the record.

***7.*** The Tribunal, placing reliance upon a judgment of three Judges’ Bench of the Supreme Court, i.e. *Union of India and others v. K.V. Jankiraman and others, (1991) 4 Supreme Court Cases 109,* has held that where the promotion of an employee is withheld on account of the pendency of a criminal case or Departmental proceedings and he is given notional promotion after the termination of criminal proceedings or Departmental proceedings in his favour and he is not accused of delaying or prolonging the proceedings of the trial Court or the Departmental inquiry, the principle of “no work no pay” cannot come in his way in claiming the promotion from back date, with all

consequential benefits, provided in the case of criminal proceedings his acquittal is not on account of just benefit of doubt and in case of Departmental proceedings he is not visited with any penalty, even that of censure.

***8.*** In the present case from para-14 of the judgment of the criminal Court, which has been reproduced hereinabove, it is clear that there was no evidence connecting the respondent with the alleged criminal acts and the prosecution had miserably failed to prove the charges. Learned counsel for the petitioner drew the attention of the Court to para-15 of the judgment of the criminal Court, per which the respondent has been acquitted by being given the benefit of doubt, but this order of the criminal Court being in conflict with what is held in para-14, as reproduced hereinabove, in our considered view, needs to be ignored. The Departmental proceedings also resulted in the exoneration of the respondent, as is clear from the order that was passed by the Disciplinary Authority, after considering the report of Inquiry Officer. Copy of the order is available at page-91 of the file. The concluding part of the order reads as follows:

> "I have carefully perused the Inquiry Report & all the other relevant documents and find that none of the charges framed against the charged official stand established by the Inquiry Officer with which I fully agree. I, being the disciplinary authority, therefore, absolve the said Sh. Krishnu Ram, Sr. Clerk of both the charges framed against him."

***9.*** The above reproduced portion of the order of the Disciplinary Authority clearly shows that the respondent was completely exonerated of the charges framed against him and no

penalty whatsoever was imposed. Thus, the ratio of the precedent relied upon by the Tribunal is applicable to the facts of the present case on all fours.

***10.*** Learned counsel for the writ petitioner placing reliance upon the judgments of the Supreme Court, i.e. *A.K. Soumini v. State Bank of Travancore and another, (2003) 7 Supreme Court Cases 238*, and *Harigovind Yadav v. Rewa Sidhi Gramin Bank and others, (2006) 6 Supreme Court Cases 145,* urged that where notional promotion is given from back date, monetary benefits are not permissible from the date of notional promotion. In A.K. Soumini's case (supra) promotion was denied to an employee, on account of his having not qualified for promotion, in accordance with the scheme for assessment of merit for promotion. High Court held that the scheme was bad and consequently directed the promotion of the employee. The Hon'ble Supreme Court held that the scheme was valid, but it granted the relief of promotion to the employee as a gesture of gratis and not by way of right and it was under these circumstances that it was held that the employee will not be entitled to claim arrears of pay. In Harigovind's case, no doubt, it was held that the employee had been wrongly denied the promotion and ordered the promotion of the employee from the date, when his junior was promoted and at the same time directed that he would be entitled to monetary benefits prospectively, but this order was passed under Article 142 of the Constitution of India with the observation that there was no need for referring the matter for fresh consideration by the Departmental Authorities and the question whether the principle of "no work no pay" would apply in such a case had not been gone into. Moreover, in this

judgment the question involved was different from the question that was specifically raised and answered by the Tribunal relying upon the judgment in K.V. Jankiraman's case (supra).

***11.*** As a result of the abovestated position, the writ petition is dismissed.

**( Surjit Singh ), J.**

**April 13, 2007**(sd) **( Sanjay Karol ), J.**